

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>UNITED STATES EQUAL EMPLOYMENT</b>	)	
<b>OPPORTUNITY COMMISSION,</b>	)	
<b>Applicant,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No.</b>
	)	
<b>AARON'S, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

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**DECLARATION OF SUSAN SMITH**

I, Susan Smith, state as follows:

1. I am an Investigator in the Chicago District Office of the Equal Employment Opportunity Commission (the "EEOC").

2. The Chicago District Office is responsible for the investigation of charges that employers have engaged in employment practices made unlawful by Title VII of the Civil Rights Act of 1964 ("Title VII").

3. I am the Investigator assigned to the files for Charge Number No. 440-2008-04591, filed by Otis Nash ("Charging Party") against Aaron's, Inc. ("Respondent").

4. I state the following based on my personal experience in working on this file and on my personal knowledge of the procedures and documents maintained by the Chicago District Office:

5. On May 1, 2008, Otis Nash ("Nash") filed a Charge of Discrimination against Respondent, Charge No. 440-2008-04591, alleging that Respondent unlawfully discriminated against him on the basis of his race in violation of Title VII, by terminating his employment. (Exhibit 1). Specifically, Nash claims that he was terminated due to the results of a criminal background check.



6. On December 4, 2009, EEOC served Respondent with Subpoena No.CH-10-037, which requested documents identifying all individuals who applied for employment with Respondent at any of its Illinois locations during the period September 1, 2005 through the present, and providing contact and other identifying information for these persons. The subpoena requested that the information be tendered by December 21, 2009. (Exhibit 2).

7. On December 16, 2009, Respondent filed a Petition to Revoke or Modify Subpoena No. 10-037. Specifically, Respondent sought to modify Request No. 4, which requested copies of its franchise agreements for its Illinois locations. Respondent did not seek to revoke or modify Request No. 3, which is the subject matter of this subpoena enforcement action. (Exhibit 3).

8. On May 21, 2010, EEOC received a copy of Respondent's franchise agreement for its Illinois locations; however, Respondent did not provide any information which was responsive to Request No. 3.

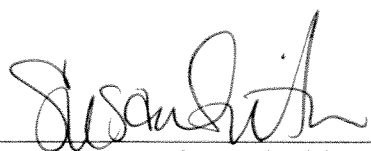
9. In September and October 2010, EEOC contacted Respondent in an effort to obtain the outstanding information without need of Court intervention. Respondent informed EEOC that it did not retain the information in an electronic format, as requested in the subpoena. EEOC informed Respondent that it would accept the requested information in any format kept by Respondent. Respondent stated that it would follow-up with EEOC. EEOC asked Respondent to respond fully to the subpoena on or before October 28, 2010.

10. To date Respondent has failed to communicate with EEOC and Respondent has failed to provide any additional information relating to Request No. 3 which would bring it into full compliance with the subpoena.

I declare under penalty of perjury that I have read the foregoing declaration and that it is

true and correct to the best of my knowledge and recollection.

Date: 1/11/2011

  
\_\_\_\_\_  
Susan Smith

EEOC Form 5 (5/01)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**440-2008-04591****Illinois Department Of Human Rights**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

**Otis Nash**

Home Phone (Incl. Area Code)

**(708) 547-8348**

Date of Birth

**02-11-1966**

Street Address

City, State and ZIP Code

**3603 Monroe Street, Bellwood, IL 60104**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**AARONS SALES AND LEASE**

No. Employees, Members

**101 - 200**

Phone No. (Include Area Code)

**(708) 344-2222**

Street Address

City, State and ZIP Code

**1040 North Avenue, Melrose Park, IL 60164**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**09-12-2007****09-12-2007**☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I began employment with Respondent in or around August 2001. My most recent position was Truck Driver. On or about September 12, 2007, I was discharged.

I believe I have been discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

**May 01, 2008**

Date

Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

**PLAINTIFF'S  
EXHIBIT****1**

EEOC Form 136  
(10/94)

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
SUBPOENA

TO: Robert Loudermilk  
President/CEO  
Aaron Rents, Inc.  
309 East Paces Ferry Road NE  
Atlanta, GA 30305

NO. CH-10-037

IN THE MATTER OF: Otis Nash v. Aarons Sales and Lease

Charge No. 440-2008-04591

Having failed to comply with previous request(s) made by or on behalf of the undersigned Commission official, YOU ARE HEREBY REQUIRED AND DIRECTED TO:

☐ Testify before: ☐ Produce and bring \* or ☒ Mail \* the documents described below to:

☐ Produce access to the evidence described below for the purpose of examination or copying to:

Susan L. Smith, Investigator with the U. S. Equal Employment Opportunity Commission, located at 500 West Madison, Suite 2000, Chicago, Illinois 60661 on or before December 21, 2009 at 10:00 a.m.

The evidence require is

All documents (see definition attached hereto as Exhibit A) which state, describe, constitute, refer to, or relate in any way to the following (See Exhibit B attached hereto and made part hereof)

cc: Vanessa Adams  
Senior Employee Relations Specialist  
Aaron Rents, Inc.  
309 E. Paces Ferry Road, N.E.  
Atlanta, GA 30305-2377

☐ (ADA) 42 U.S.C. 12117(a) ☒ (Title VII) 42 U.S.C. 2000e-9 ☐ (ADEA) 29 U.S.C. 626(a) ☐ (EPA) 29 U.S.C. 209 ☐ (GINA) 42 U.S.C. 2000ff-6

ISSUING OFFICIAL (Typed name, title and address)  
John P. Rowe, District Director  
Equal Employment Opportunity Commission  
500 West Madison, Suite 2800  
Chicago, IL 60661

ON BEHALF OF THE COMMISSION

*John P. Rowe*

Date

12/4/09



PLAINTIFF'S  
EXHIBIT

2

EXHIBIT B

Subpoena No. CH-10-037  
Otis Nash v. Aarons Sales and Lease  
Charge Number 440-2008-04591

1. Submit a list of all positions for which Respondent has conducted criminal background checks at any time from September 1, 2005 to the present. For each position include job title, hourly rate of pay or salary, and the job description.
2. Submit copies of all analyses or studies that Respondent had completed to indicate how an applicant's criminal background check correlates with his/her ability to carry out specific job functions of the job for which they are applying. Also, indicate the date the study or analysis was completed.
3. For the time period from September 1, 2005 to the present, submit an electronic database<sup>1</sup> identifying all individuals who have applied for employment at any Respondent location in the State of Illinois. For each individual, provide:
  - a. name;
  - b. race;
  - c. national origin;
  - d. last known home address, home telephone number and cell phone number;
  - e. store location at which the applicant applied;
  - f. copy of the job application;
  - g. position applied for;
  - h. date of offer of employment, if applicable;
  - i. date criminal background check was conducted, if applicable;
  - j. date of hire, if applicable;
  - k. position title at hire, if applicable;
  - l. date offer of employment was rescinded, if applicable;
  - m. copies of all applicants' criminal background checks.
4. Submit a list of all Respondent locations in the State of Illinois. Indicate which locations are corporate owned and which are franchises. For each franchise location, submit a copy of the franchise agreement.

---

<sup>1</sup> "Electronic database" shall mean a native electronic file submitted on a compact disc (CD-ROM) that can be opened and sorted by Microsoft Excel, e.g. Microsoft Excel file (".XLS"), comma delimited file (".CSV"), wherein the first row of the database contains the field or variable names of the requested information and each subsequent row of the database shall contain the requested information for each individual identified.

**EXHIBIT A**

The term "document" is used in its broadest sense and means the complete original or a true, correct and complete copy and any non-identical copies (whether different from the original because of notes or comments made on or attached to such copy or otherwise) of any written, graphic, typed, printed, filmed, recorded or electronic information, published or unpublished, no matter how produced, recorded, stored, or reproduced (including computer stored or generated data, together with instructions or programs necessary to search and retrieve such data), including, without limitation, any writing, letter, telegram, memorandum, note, electronic mail or message, telephone message, telephone or toll call record, statement, book, handbook, appointment book, calendar, minutes or record of meetings, report, manual, study, analysis, summary, log, digest, record, bill, statement, voucher, working paper, chart, graph, table, drawing, photograph, videotape, audio recording (including telephone answering machine messages), diary, tabulation, data sheet, directive, standard, pamphlet, brochure, circular, advertisement, announcement, application, list, permit, survey, punch card, witness statement, note of interview or communication or any other data compilation in the possession, custody, or control of Respondent, including all drafts of such documents.

RECEIVED EEOC

FOR THE UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION DEC 13 2009

OTIS NASH	)	
	)	CHICAGO DISTRICT OFFICE
Charging Party,	)	
	)	CHARGE NO.
and	)	440-2008-04591
	)	
AARON'S SALES AND LEASE,	)	SUBPOENA NO.
	)	CH-10-037
Respondent.	)	

RESPONDENT AARON'S, INC.'S PETITION  
CONTAINING OBJECTIONS TO SUBPOENA ISSUED BY  
THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

To: John P. Rowe, District Director  
Equal Employment Opportunity Commission  
500 West Madison, Suite 2800  
Chicago, Illinois 60661

COMES NOW, Respondent Aaron's, Inc. (hereinafter, "Aarons") and, pursuant to 29 C.F.R. § 1601.16, hereby submits its Petition Containing Objections to Subpoena Issued By The United States Equal Employment Opportunity Commission. Specifically, Aarons seeks to modify Request No. 4 of the subpoena based on the objections contained herein. A copy of the Subpoena (No. CH-10-037) is attached hereto as "Attachment A."

I. RESPONDENT'S OBJECTIONS

REQUEST NO. 4:

Submit a list of all Respondent locations in the State of Illinois. Indicate which locations are corporate owned and which are franchises. For each franchise location, submit a copy of the franchise agreement.

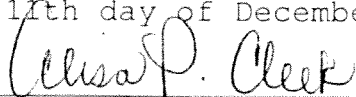




OBJECTIONS TO REQUEST NO. 4:

Aarons objects to the portion of Request No. 4 in the attached subpoena that states, "[f]or each franchise location, submit a copy of the franchise agreement." Specifically, Aarons objects to said Request on the grounds that it would require it to respond by acquiring and/or supplying information that would be irrelevant and immaterial to the subject matter or issues involved in this investigation. Aarons further objects to said Request on the grounds that it would require Aarons to disclose materials that contain confidential and/or proprietary information that does not relate to the subject matter or issues involved in this investigation. Aarons also objects to said Request to the extent that the subpoena was not properly served. As such, Aarons respectfully requests that the Commission modify Request No. 4 contained in the attached subpoena inasmuch as it remove the following sentence, "[f]or each franchise location, submit a copy of the franchise agreement."

Respectfully submitted, this 17th day of December 2009.

  
\_\_\_\_\_  
Alisa P. Cleek  
Georgia Bar No. 581063

ELARBEE, THOMPSON, SAPP & WILSON, LLP  
800 International Tower  
229 Peachtree St., N.E.  
Atlanta, Georgia 30303  
Telephone: (404) 659-6700  
Facsimile: (404) 222-9718  
Email: [cleek@elarbeethompson.com](mailto:cleek@elarbeethompson.com)  
Attorneys for Respondent Aaron's, Inc.

Attachment "A"

EEOC Form 136  
(10/34)

UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
**SUBPOENA**

TO: Robert Loudermilk  
President/CEO  
Aaron Rents, Inc.  
309 East Paces Ferry Road NE  
Atlanta, GA 30305

NO. CH-10-037

**Aaron Rents, Inc.**

DEC 07 2009

IN THE MATTER OF: Otis Nash v. Aarons Sales and Lease

**Employee Relations**

Charge No. 440-2008-04591

Having failed to comply with previous request(s) made by or on behalf of the undersigned Commission official, YOU ARE HEREBY REQUIRED AND DIRECTED TO:

☐ Testify before: ☐ Produce and bring \* or ☒ Mail \* the documents described below to:

☐ Produce access to the evidence described below for the purpose of examination or copying to:

Susan L. Smith, Investigator with the U. S. Equal Employment Opportunity Commission, located at 500 West Madison, Suite 2000, Chicago, Illinois 60661 on or before December 21, 2009 at 10:00 a.m.

The evidence require is

All documents (see definition attached hereto as Exhibit A) which state, describe, constitute, refer to, or relate in any way to the following (See Exhibit B attached hereto and made part hereof)

cc: Vanessa Adams  
Senior Employee Relations Specialist  
Aaron Rents, Inc.  
309 E. Paces Ferry Road, N.E.  
Atlanta, GA 30305-2377

☐ (ADA) 42 U.S.C. 12117(a) ☒ (Title VII) 42 U.S.C. 2000e-9 ☐ (ADEA) 29 U.S.C. 626(a) ☐ (EPA) 29 U.S.C. 209 ☐ (GINA) 42 U.S.C. 2000ff-6

ISSUING OFFICIAL (Typed name, title and address)  
John P. Rowe, District Director  
Equal Employment Opportunity Commission  
500 West Madison, Suite 2800  
Chicago, IL 60661

ON BEHALF OF THE COMMISSION



John P. Rowe 12/4/09  
Date

**EXHIBIT A**

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EXHIBIT B

Subpoena No. CH-10-037  
Otis Nash v. Aarons Sales and Lease  
Charge Number 440-2008-04591

1. Submit a list of all positions for which Respondent has conducted criminal background checks at any time from September 1, 2005 to the present. For each position include job title, hourly rate of pay or salary, and the job description.
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  - a. name;
  - b. race;
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  - d. last known home address, home telephone number and cell phone number;
  - e. store location at which the applicant applied;
  - f. copy of the job application;
  - g. position applied for;
  - h. date of offer of employment, if applicable;
  - i. date criminal background check was conducted, if applicable;
  - j. date of hire, if applicable;
  - k. position title at hire, if applicable;
  - l. date offer of employment was rescinded, if applicable;
  - m. copies of all applicants' criminal background checks.
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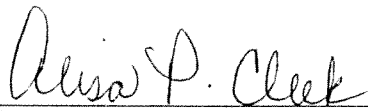
FOR THE UNITED STATES OF AMERICA  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OTIS NASH	)	
	)	
Charging Party,	)	
	)	CHARGE NO.
and	)	440-2008-04591
	)	
AARON'S SALES AND LEASE,	)	SUBPOENA NO.
	)	CH-10-037
Respondent.	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2009, I served a true and correct copy of **RESPONDENT AARON'S, INC.'S PETITION CONTAINING OBJECTIONS TO SUBPOENA ISSUED BY THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION** via United States Mail, first-class postage prepaid, to the following individuals as set forth below:

John P. Rowe, District Director  
Equal Employment Opportunity Commission  
500 West Madison, Suite 2800  
Chicago, Illinois 60661

  
\_\_\_\_\_  
Alisa P. Cleek  
Georgia Bar No. 581063

ELARBEE, THOMPSON, SAPP & WILSON, LLP  
800 International Tower  
229 Peachtree St., N.E.  
Atlanta, Georgia 30303  
Telephone: (404) 659-6700  
Facsimile: (404) 222-9718  
Email: [cleek@elarbeethompson.com](mailto:cleek@elarbeethompson.com)

Attorneys for Respondent Aaron's, Inc.